IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-376-2003

Date of decision : 14.11.2013

Gurdev Singh

...Petitioner

Versus

State of Punjab

…Respondent

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

****

Present: Mr. P.S. Dhaliwal, Advocate,
for the petitioner.

Mr. Mehardeep Singh, DAG, Punjab.

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JITENDRA CHAUHAN, J.

The present petition has been filed against the judgment dated 07.02.2003, passed by the learned Additional Sessions Judge, Barnala, (for short, 'the Appellate Court'), whereby, the appeal preferred by the accused-petitioner against the judgment of conviction and order of sentence dated 11.09.2002, passed by the learned Judicial Magistrate 1st Class, Barnala, (for short, 'the trial Court'), has been dismissed. The accused-petitioner has been convicted and sentenced as under:-

Under Section 279 IPC	RI for three months
Under Section 337 IPC	RI for three months

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Under Section 338 IPC	RI for six months
Under Section 304-A IPC	RI for one year and a fine of Rs.2,000/-. In default of payment of fine, to further undergo RI for three months

However, all the sentences were ordered to run concurrently.

Briefly stated, the facts of the present case, as recorded in para No.2 of the trial Court judgment, as as under:-

> "*2. The facts of the prosecution case would lie in a narrow compass:-*
>
> *On 5.5.1999, the marriage of Gursewak Singh was to be performed, for which he alongwith his family members had gone to Malaut. After his marriage, he alongwith other members of the marriage party was coming in a Jeep bearing registration No.PB-03-B-3399, driven by Kulwant Singh @ Balwant Singh s/o Jagsir Singh and at about 4.30 p.m., when the said Jeep reached the area of Santpura, a Tractor No.PBD-1387 driven by the accused in a rash and negligent manner came from the link road for coming on the main road, which struck against the said Jeep and as a result of the impact, the Jeep turned turtle, resulting in the death of Jasbir Singh whereas Babu Singh, Nirmal Singh, Gurbachan Singh, Binder Kaur, Birpal Kaur, Gurmit*

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Singh, Jang Singh, Karamjit Kaur, Satnam Singh and Kulwant Singh @ Balwant Singh received injuries. Jarnail Singh, Sarpanch r/o Santpura came to the scene of accident and took the injured to the Civil Hospital, Barnala."

Upon completion of investigation, challan was presented against the accused. The petitioner was charged for commission of offence under Sections 279, 304-A and 338 IPC, to which the accused-petitioner pleaded innocence and claimed trial.

In order to prove its case against the accused-appellant, the prosecution examined Dr. Rajinder Kumar as PW-1, Jang Singh as PW-2, Gursewak Singh as PW-3, Babu Singh as PW-4, Satnam Singh as PW-5, Surjit Singh as PW-6, Resham Singh, Clerk in the office of SDM Barnala, as PW-7, Sarbjit Kumar as PW-8, Harbans Singh as PW-9, SI Chanan Singh as PW-10, and Gurcharan Singh as PW-11.

When examined under Section 313 Cr.P.C., the accused denied all the allegations and pleaded false implication. Although, he offered to lead evidence in defence, but closed the same without any evidence.

The learned trial Court, after hearing the learned counsel for the parties and perusing the evidence on record,

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convicted and sentenced the accused-petitioner, as detailed at the outset of this judgment. Feeling aggrieved, the petitioner went in appeal before the learned Appellate Court, which was also dismissed. Hence, the present petition, which was admitted by this Court on 21.02.2003.

The learned counsel for the petitioner contends that there is an unexplained delay in lodging the instant FIR. The occurrence took place on 05.05.1995, whereas, the FIR in question was got registered on 06.05.1995. The learned counsel further contends that neither the petitioner was apprehended from the spot, nor was he previously known to the complainant. No test identification parade was carried out during the pre-trial stage and the petitioner was identified only in the Court. Therefore, the very identity of the petitioner is not established in the instant case. The learned counsel further refers to the mechanical report of the tractor, Ex.PW-9/B, and states that no damage i.e. any scratch or dent, was found on the tractor, to show that the tractor in question was not involved in the accident. On the other hand, as per Ex.PW-9/A, mechanical report of the jeep in question, there was a dent on the right side. The learned counsel further contends that as per the case of the prosecution, the tractor was coming from the side of Santpura Kothe, and it could have only struck against the left side of the jeep and not on the right side. The learned counsel further contends that the owner of the tractor, Gurcharan Singh

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and the complainant, Gursewak Singh, belong to the same village, whereas the petitioner hails from different village.

On the other hand, the learned State counsel submits that the prosecution has been able to successfully prove its case against the accused-petitioner beyond reasonable doubt. Both the Courts below have concurrently held him guilty. The author of the FIR has categorically stated in his deposition that he know the petitioner. The petitioner did not lead any evidence to prove his innocence. There is no previous enmity of the complainant with the petitioner.

I have heard the learned counsel for the parties and perused the record with their able assistance.

The accident in question took place on 05.05.1999 at about 4.30 p.m., in which one person lost his life and seven others were injured. The FIR was lodged on the next date i.e. on 06.05.1999. The first anxiety of any person would be to take the injured to the hospital for getting them the medical assistance so that the valuable lives could be saved. Therefore, in the opinion of this Court, the delay of one day in lodging the FIR, in the instant case, is of no consequence.

The learned counsel for the petitioner has referred to the mechanical reports of both the vehicles involved in the accident to prove that the tractor in fact, did not hit the jeep as there was no damage to its body. However, this Court does not

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find favour with the above contention. The jeep was being driven on the main road and must have been at good speed. In these circumstances, if the driver of the jeep suddenly applies brakes, the jeep may turn around. Moreover, a little impact of the two vehicles, one of which is at a high speed, is sufficient to disturb its balance. If a vehicle climbs from the link road to the main road, it is the duty of its driver to take care about the traffic on the main road. Therefore, the mere fact that the tractor did not have any sign of damage after the accident is not a ground to hold that it was not at all involved in that accident. The evidence of the eye-witnesses cannot be brushed aside merely on this account as sometimes, even mild impact at a particular angle might result into big mishap.

As far as the identity of the accused-petitioner is concerned, his name figures in the FIR Ex.PW10/C. He was identified by PW2-Jang Singh, PW3-Gursewak Singh and PW5-Satnam Singh. They have categorically deposed that the accused-petitioner was driving the vehicle at a high speed, in a rash and negligent manner. The tractor in question was owned by PW11, Gurcharan Singh, as is proved by PW7 Resham Singh. Although, the accused-petitioner has pleaded false implication, however, he has not been able to prove as to why the complainant and other witnesses would name him especially when there is no previous enmity between the parties.

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In view of the above discussion, this Court feels that the prosecution has been able to substantiate its case against the accused-petitioner, beyond reasonable doubt as noticed by the learned Court below. Accordingly, the present revision petition is dismissed and the impugned judgments passed by the learned Courts below are upheld. The petitioner is stated to be on bail. His bail bonds shall stand forfeited. He be taken into custody forthwith to undergo the remaining part of the sentence.

14.11.2013 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Note : Whether to be referred to Reporter : Yes / No.

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